

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES THOMAS, ) No. C 08-2938 JSW (PR)  
Petitioner, )  
vs. )  
ROBERT AYERS, JR., Warden, ) ORDER TO SHOW CAUSE  
Respondent. ) (Docket No. 3)  
\_\_\_\_\_  
)

## INTRODUCTION

Petitioner, a prisoner of the State of California, currently incarcerated at San Quentin State Prison in San Quentin, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the decision by the California Board of Parole Hearings (“Board”) to deny Petitioner parole. Petitioner has paid the filing fee, so the motion to proceed *in forma pauperis* is DENIED as moot (docket no. 3). This order directs Respondent to show cause why the petition should not be granted.

## BACKGROUND

According to the petition, Petitioner was convicted of second degree murder in Los Angeles County Superior Court, and, in 1982, the trial court sentenced him to a term of 16 years-to-life in state prison. In 2007, the Board found Petitioner unsuitable for parole. Petitioner challenged this decision unsuccessfully in a habeas petition filed in the superior court. Petitioner contends that he also challenged the Board's decision in the state appellate and supreme courts by petitions for a writ of habeas corpus.

## DISCUSSION

## I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

## II Legal Claims

Petitioner alleges that the Board's decision violated his right to due process because the decision was not supported by evidence of his present dangerousness and that it violates his plea agreement. Liberally construed, the allegations are sufficient to warrant a response from Respondent. *See Board of Pardons v. Allen*, 482 U.S. 369; *see, e.g., Superintendent v. Hill*, 472 U.S. 445 (1985); *Sass v. California Bd. of Prison Terms*, 461 F.3d 1123 (9th Cir. 2006); *Biggs v. Terhune*, 334 F.3d 910, 915-17 (9th Cir. 2003).

## CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)** days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition. If Petitioner wishes to respond

1 to the answer, he shall do so by filing a traverse with the Court and serving it on  
2 Respondent within **thirty (30)** days of his receipt of the answer.

3 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
4 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
5 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court  
6 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**  
7 days of receipt of the motion, and Respondent shall file with the Court and serve on  
8 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

9 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep  
10 the Court informed of any change of address by filing a separate paper captioned "Notice  
11 of Change of Address." He must comply with the Court's orders in a timely fashion.  
12 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
13 to Federal Rule of Civil Procedure 41(b).

14 IT IS SO ORDERED.

15 DATED: December 19, 2008



16 JEFFREY S. WHITE  
17 United States District Judge  
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